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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Lawrence J Warfield,  
10 Appellant,  
11 v.  
12 Johnie Lee Nance,  
13 Appellee.  
14

No. CV-23-00504-PHX-DWL  
**ORDER**

15 **INTRODUCTION**

16 Lawrence J. Warfield (“Appellant”) is the trustee of the estate of Johnie Lee Nance  
17 (“Debtor”). In May 2022, Debtor filed for bankruptcy. In June 2022, Debtor filed a  
18 schedule in which he claimed exemptions for some of his assets, including a property  
19 located in Wellton, Arizona (the “Property”) and a recreational vehicle located in Wellton,  
20 Arizona (the “RV”), under Arizona law. In September 2022, Appellant objected to those  
21 exemptions. Instead of responding directly, Debtor amended his schedule to claim  
22 exemptions under Washington law. Appellant later objected to those exemptions. The  
23 bankruptcy court eventually issued final orders sustaining both sets of objections and  
24 denying Debtor’s claimed state-law exemptions.

25 Afterward, Debtor once again amended his schedule, this time claiming exemptions  
26 under federal law, including exemptions for the Property and RV under the federal  
27 homestead exemption. Appellant, in turn, objected on various grounds, including that the  
28 claimed federal exemptions were barred by principles of res judicata.

1 In March 2023, after full briefing and a hearing, the bankruptcy court overruled  
 2 Appellant's objections. The court granted Debtor's exemption in the Property under the  
 3 federal homestead exemption, 11 U.S.C. § 522(d)(1), and held *sua sponte* that Debtor could  
 4 exempt the RV under the federal wildcard exemption, 11 U.S.C. § 522(d)(5).

5 In this appeal, Appellant raises two issues—(1) whether the bankruptcy court erred  
 6 in overruling his *res judicata*-based objection to Debtor's federal exemptions in the  
 7 Property and RV; and (2) whether the bankruptcy court erred in *sua sponte* granting Debtor  
 8 an exemption in the RV under 11 U.S.C. § 522(d)(5). (Doc. 1.) For the following reasons,  
 9 the Court agrees with Appellant on both points. Accordingly, the bankruptcy court's  
 10 decision is reversed.

## 11 BACKGROUND

### 12 I. Relevant Factual Background

13 On May 31, 2022, Debtor filed a petition for bankruptcy in the United States  
 14 Bankruptcy Court for the District of Arizona. (Doc. 4-1.)

15 On June 10, 2022, Debtor filed a form listing his assets, including the Property; a  
 16 timeshare in Fife, Washington; a Dodge Ram vehicle; a Hyundai Tucson vehicle; a utility  
 17 vehicle; the RV; household goods and electronics; clothing; jewelry; cash; savings  
 18 accounts; checking accounts; an outdoor shed located in Wellton, Arizona; and a water  
 19 softener. (Doc. 4-2 at 4-11.)

20 That same day, Debtor filed a schedule claiming exemptions for some of his assets  
 21 under Arizona law (the "Arizona Schedule"). (*Id.* at 12-13.) On the Arizona Schedule,  
 22 Debtor checked a box indicating that he was "claiming state and federal nonbankruptcy  
 23 exemptions. 11 U.S.C. § 522(b)(3)." (*Id.* at 12.) Debtor then listed the assets, the relevant  
 24 exemption under Arizona law, and amount of exemption for each asset: (1) the Property  
 25 for \$38,997.64 under A.R.S. § 33-1101(A); (2) the Hyundai Tucson for \$6,000 under  
 26 A.R.S. § 33-1125(8); (3) the RV for \$250,000 under A.R.S. § 33-1101(A); (4) household  
 27 goods for \$1,000 under A.R.S. § 33-1123; (5) household electronics for \$200 under A.R.S.  
 28 § 33-1123; (6) clothing for \$60 under A.R.S. § 33-1125(1); (7) a ring for \$50 under A.R.S.

1 § 33-1125(1); (8) a watch for \$20 under A.R.S. § 33-1125(6); and (9) a checking account  
 2 for \$300 under A.R.S. § 33-1126(A)(9). (*Id.* at 12-13.) The provision that Debtor invoked  
 3 with respect to the Property and RV, A.R.S. § 33-1101(A), is Arizona’s homestead  
 4 exemption.

5 On September 20, 2022, Appellant filed an objection to Debtor’s exemptions in the  
 6 Arizona Schedule. (Doc. 4-4.) Appellant argued, in relevant part:

7 [D]ebtor lived in the state of Washington from “2014” until “7/2020”. Since  
 8 this bankruptcy case was filed on May 31, 2022, the 730 day look back period  
 9 of 11 U.S.C. § 522(b)(3)(A) extends to May 31, 2020, which is when  
 10 [Debtor] still lived in Washington. And, since [Debtor] did not exclusively  
 11 live in Arizona for the full 730 days prior to bankruptcy, then [Debtor’s]  
 12 exemptions are determined by the place where [Debtor] lived during the 180  
 13 days prior to the 730 days (approx. Nov. 2019 through May 2020). . . .  
 14 [Debtor] is not, therefore, entitled to the Arizona exemptions which [Debtor]  
 15 has claimed.

16 (*Id.* at 2-3.) The objection notified Debtor that his “rights may be affected” by Appellant’s  
 17 objection and that:

18 If you do not want the court to sustain [Appellant’s] objection to the claimed  
 19 exemptions and disallow them or if you want the court to consider your views  
 20 on [Appellant’s] objection, then on or before October 13, 2022 you or your  
 21 attorney must file with the Court a written response requesting a hearing on  
 22 [Appellant’s] objection. . . . If you or your attorney do not take these steps,  
 23 the Court may decide that you do not oppose [Appellant’s] objection and  
 24 may enter an order that sustains [Appellant’s] objection and disallows those  
 25 exemptions to which [Appellant] has objected.

26 (*Id.* at 3-4, emphases omitted.)

27 That same day, Debtor amended the Arizona Schedule by adding assets, removing  
 28 references to Arizona’s statutory scheme, and claiming exemptions in his assets under  
 Washington law. (Doc. 4-5 [hereinafter the “Washington Schedule”].) On the Washington  
 Schedule, Debtor checked a box indicating that he was “claiming state and federal  
 nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3).” (*Id.* at 2.) Then Debtor listed the  
 assets, the relevant exemption under Washington law, and amount he claimed as exempt

1 for each asset: (1) the Property for \$38,997.64 under RCW §§ 6.13.010, 6.13.020,  
 2 6.13.030; (2) the Hyundai Tucson for \$3,250 under RCW § 6.15.010(1)(d)(iii); (3) the RV  
 3 for \$250,000 under RCW §§ 6.13.010, 6.13.020, 6.13.030; (4) household goods for \$1,000  
 4 under RCW § 6.15.010(1)(d)(i); (5) household electronics for \$200 under RCW  
 5 § 6.15.010(1)(d)(i); (6) clothing for \$60 under RCW § 6.15.010(1)(a); (7) a ring for \$50  
 6 under RCW § 6.15.010(1)(a); (8) a watch for \$20 under RCW § 6.15.010(1)(a); (9) cash  
 7 for \$3 under RCW § 6.15.010(1)(d)(ii); (10) a savings account for \$4.07 under RCW  
 8 § 6.15.010(1)(d)(ii); (11) a checking account for \$300 under RCW § 6.15.010(1)(d)(ii);  
 9 (12) an outdoor shed for \$0 under RCW §§ 6.13.010, 6.13.020, 6.13.030; and (13) a water  
 10 softener for 100% of its unspecified value under RCW §§ 6.13.010, 6.13.020, 6.13.030,  
 11 6.15.010(1)(d)(ii). (*Id.* at 2-4.)

12 On October 14, 2022, Debtor responded to Appellant’s objection to his exemptions  
 13 in the Arizona Schedule. (Doc. 4-6.) Debtor argued that the Washington Schedule should  
 14 serve as his response to Appellant’s objection and that “[i]n light of [the Washington  
 15 Schedule], Trustee’s Objection should be overruled as moot.” (*Id.* at 2.)

16 Later that day, Appellant filed a reply. (Doc. 4-7.) Appellant argued that Debtor’s  
 17 response “should be stricken and/or disregarded” because it was “untimely”—the deadline  
 18 to respond was October 13, 2022—and that Appellant’s objection to the Arizona Schedule  
 19 should be sustained. (*Id.* at 3-4.) Appellant argued that his “objection is not moot as  
 20 [Debtor] asserts” because “absent an order sustaining [Appellant’s] pending objection,  
 21 there is nothing to prevent [Debtor] from reverting to the prior [Arizona] exemptions later  
 22 in the case” which would lead to “a never ending change in exemptions.” (*Id.* at 3.)

23 On October 17, 2022, the bankruptcy court issued a final order sustaining  
 24 Appellant’s objection to Debtor’s exemptions under Arizona law in the Arizona Schedule.  
 25 (Doc. 1 at 21 [bankruptcy court docket entry 57].)<sup>1</sup>

26  
 27 <sup>1</sup> This order is not included in the excerpts of the record. (Doc. 4.) Instead, it appears  
 28 that Appellant mistakenly included two copies of the bankruptcy court’s final order  
 sustaining Appellant’s second objection to Debtor’s homestead exemptions in the Property  
 and RV in the Washington Schedule. (Docs. 4-8, 4-10. *See also* Doc. 3 at 5.)

1 On October 19, 2022, Appellant filed an objection to Debtor's exemptions in the  
 2 Property and RV under Washington law in the Washington Schedule. (Doc. 4-9.)  
 3 Appellant argued that, as recognized in *In re Wieber*, 347 P.3d 41 (Wash. 2015),  
 4 "Washington's homestead exemption only applies to property located in Washington," and  
 5 because the Property and RV were located in Arizona, "the homestead exemption claimed  
 6 by [Debtor] in his Arizona real estate, and in his RV which is located upon his Arizona real  
 7 estate, cannot be allowed." (*Id.* at 3.)<sup>2</sup> The objection notified Debtor that he must file a  
 8 written response by November 14, 2022, otherwise "the Court may decide that you do not  
 9 oppose [Appellant's] objection and may enter an order that sustains [his] objection and  
 10 disallows those exemptions to which [he] has objected." (*Id.* at 4-5.)

11 On November 23, 2022, after Debtor failed to respond, the bankruptcy court issued  
 12 a final order sustaining Appellant's objection and denying Debtor's asserted exemptions in  
 13 the Property and RV under Washington law in the Washington Schedule: "No response or  
 14 opposition thereto having been filed and served; and [g]ood cause appearing. It is ordered  
 15 that [Appellant's] objection . . . is sustained. The homestead exemptions asserted by  
 16 [Debtor]" in the Property and RV "are denied." (Doc. 4-10 at 2, cleaned up.)

17 On December 19, 2022, Debtor amended the Washington Schedule by adding an  
 18 asset, removing references to Washington law, and claiming exemptions under federal  
 19 bankruptcy law (the "Federal Schedule"). (Doc. 4-11.) On the Federal Schedule, Debtor  
 20 checked a box indicating that he was "claiming federal exemptions. 11 U.S.C.  
 21 § 522(b)(2)." (*Id.* at 2.) Then Debtor listed the assets, the relevant federal exemption  
 22 statute, and amount he claimed as exempt for each asset: (1) the Property for \$5,000 under  
 23 11 U.S.C. § 522(d)(1); (2) the Hyundai Tucson for \$1,210 under 11 U.S.C. § 522(d)(2);  
 24 (3) the RV for \$5,000 under 11 U.S.C. § 522(d)(1); (4) household goods for \$1,000 under  
 25 11 U.S.C. § 522(d)(3); (5) household electronics for \$200 under 11 U.S.C. § 522(d)(3);  
 26 (6) clothing for \$60 under 11 U.S.C. § 522(d)(3); (7) one ring for \$50 under 11 U.S.C.

27  
 28 <sup>2</sup> Appellant also raised additional objections, the substance of which is not relevant here. (*Id.*)

1 § 522(d)(4); (8) a watch for \$20 under 11 U.S.C. § 522(d)(4); (9) cash for \$3 under 11  
2 U.S.C. § 522(d)(5); (10) two savings accounts for \$0 and \$4.07, respectively, under 11  
3 U.S.C. § 522(d)(5); (11) one checking account for \$58.37 under 11 U.S.C. § 522(d)(5);  
4 (12) an outdoor shed for \$0 under § 522(d)(3); and (13) a water softener for \$0 under  
5 § 522(d)(5). (*Id.* at 2-4.)

6 On January 14, 2023, Appellant filed an objection to Debtor's exemptions in the  
7 Property and RV in the Federal Schedule. (Doc. 4-12.) Appellant argued that Debtor "may  
8 not wait until [Appellant] has prevailed on an objection to his asserted exemptions and then  
9 try a second time, and then a third time, to exempt the same assets in a different fashion."  
10 (*Id.* at 3. *See also id.* at 4 "[D]ebtor is trying out new legal theories, based on the same set  
11 of facts, each time that he loses. The law does not permit the debtor to engage in such  
12 serial litigation."].) Appellant argued that "[s]uch conduct is in bad faith and is prejudicial  
13 to the bankruptcy estate" because "[t]o date, the bankruptcy estate has incurred over  
14 \$5,000.00 in legal fees to defeat the unlawful exemptions asserted by [Debtor]." (*Id.* at  
15 4.)<sup>3</sup> As with Appellant's previous objections, this objection informed Debtor that he must  
16 file a written response by a specified date and warned Debtor of the consequences of failing  
17 to respond. (*Id.* at 5-6.)

18 On February 7, 2023, Debtor filed a timely response. (Doc. 4-13.) Debtor argued  
19 that: (1) Appellant "does not cite to any section of the Bankruptcy Code or any Bankruptcy  
20 Rule to support his argument"; (2) "an amended exemption may be disallowed if it results  
21 in prejudice to a *creditor*," and Appellant is not a creditor; and (3) "debtors in bankruptcy  
22 have a general right to amend their schedules, including their exemptions, at any time  
23 before the case is closed. Further, bankruptcy courts have no equitable authority under  
24 federal law to restrict this right based on a perception of bad faith or prejudice to creditors."  
25 (*Id.* at 2-3, emphasis in original, internal citation omitted.) Further, Debtor argued that  
26 Appellant "could have avoided the expense of preparing and filing its prior Objections with  
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28 <sup>3</sup> Appellant also raised an additional objection, the substance of which is not relevant  
here. (*Id.* at 4-5.)

1 a simple memo or email alerting Debtor’s counsel to the flaws” in the Arizona Schedule  
 2 and Washington Schedule, and that instead Appellant “has inflicted unnecessary expense  
 3 on Debtor to respond to the Objection.” (*Id.* at 4.)<sup>4</sup>

4 On February 21, 2023, Appellant filed a reply. (Doc. 4-14.) Appellant argued that  
 5 “[r]es judicata bars this third exemption claim, and res judicata has not been abrogated.”  
 6 (*Id.* at 2-4, cleaned up.)<sup>5</sup>

7 On March 15, 2023, the bankruptcy court held a hearing on Appellant’s objection  
 8 to Debtor’s exemptions in the Property and RV in the Federal Schedule. (Doc. 4-16.)  
 9 During the hearing, the court stated:

10 [U]nder Federal Rule of Bankruptcy Procedure 1009(a) the [d]ebtors have a  
 11 right to amend a voluntary petition, list, schedule or statement, as a matter of  
 12 course, at any time before the case is closed. . . . Debtor is not able to claim  
 13 an exemption of his real property under Washington law. Further, the Debtor  
 14 is also not entitled to the exemptions under Arizona law, because his domicile  
 15 under 522(b)(3)(A) was in Washington. Because the Debtor is ineligible for  
 16 both Washington and Arizona exemptions, the hanging paragraph of Section  
 17 522(b)(3) allows a debtor to claim the federal exemption on his real property  
 18 under 522. . . . [Appellant has] failed to demonstrate how the Debtor’s  
 19 amending of the schedules was not within his right under the Federal Rule of  
 20 Bankruptcy Procedure 1009(a). . . . Furthermore, because the Debtor has a  
 21 right under Federal Rule of Bankruptcy Procedure 1009(a) to amend the  
 22 schedules as a matter of course at any time before the closing of the case, the  
 23 Debtor did not prejudice [Appellant] by doing so in attempt to resolve  
 24 [Appellant’s] previous objections.

25 (*Id.* at 12-15.) The court thus overruled Appellant’s objection and concluded that “Debtor  
 26 is . . . eligible for exemptions under federal law.” (*Id.* at 14.) Specifically, the court  
 27 concluded that the Property was exempt under 11 U.S.C. § 522(d)(1), the federal  
 28 homestead exemption, and that the RV was exempt under 11 U.S.C. § 522(d)(5), the  
 federal wildcard exemption, even though Debtor did not claim the RV as exempt under

<sup>4</sup> Debtor also raised an additional argument, the substance of which is not relevant here. (*Id.* at 4-5.)

<sup>5</sup> Appellant also raised additional arguments, the substance of which is not relevant here. (*Id.* at 4-5.)



1 that statute in the Federal Schedule. (*Id.* at 9-10, 13.)

2 On March 20, 2023, the bankruptcy court issued a final order overruling Appellant's  
3 objection "[f]or the reasons stated on the record." (Doc. 4-15.)

## 4 II. Procedural History

5 On March 23, 2023, Appellant filed a notice of appeal. (Doc. 1 at 5-7.)

6 On April 22, 2023, Appellant filed an opening brief. (Doc. 3.)

7 On April 26, 2023, the bankruptcy court certified that the record on appeal was  
8 complete. (Doc. 5.)

9 The appeal later became fully briefed. (Docs. 10, 11.) Neither side requested oral  
10 argument.

## 11 **DISCUSSION**

### 12 I. Jurisdiction And Standard Of Review

13 Under 28 U.S.C. § 158(a)(1), district courts "have jurisdiction to hear appeals . . .  
14 from final judgments, orders, and decrees . . . of bankruptcy judges entered in cases and  
15 proceedings referred to the bankruptcy judges under section 157 of this title."

16 As for the standard of review, the Ninth Circuit has explained that "we review de  
17 novo a district court's ruling on the availability of res judicata both as to claim preclusion  
18 and as to issue preclusion. The preclusive effect of a judgment in a prior case presents a  
19 mixed question of law and fact in which the legal issues predominate. As to issue  
20 preclusion, once we determine that it is available, the actual decision to apply it is left to  
21 the district court's discretion." *Robi v. Five Platters, Inc.*, 838 F.2d 318, 321 (9th Cir.  
22 1988) (cleaned up). The same standard applies in the bankruptcy context. *In re Cogliano*,  
23 355 B.R. 792, 800 (B.A.P. 9th Cir. 2006) ("We review the determination of whether issue  
24 or claim preclusion applies de novo as mixed questions of law and fact in which legal  
25 questions predominate.") (cleaned up). *Cf. In re Albert*, 998 F.3d 1088, 1091 (9th Cir.  
26 2021) ("[W]e review the bankruptcy court's legal conclusions de novo, its factual findings  
27 for clear error, and its application of issue preclusion for an abuse of discretion.") (cleaned  
28 up). "[A] bankruptcy court necessarily abuses its discretion if it bases its decision on an



erroneous view of the law or clearly erroneous factual findings.” *In re Gould*, 401 B.R. 415, 429 (B.A.P. 9th Cir. 2009), *aff’d*, 603 F.3d 1100 (9th Cir. 2010) (citation omitted).

## II. Res Judicata

### A. **The Bankruptcy Court’s Analysis**

The bankruptcy court relied on two federal provisions when it rejected Appellant’s res judicata-based objection to Debtor’s assertion of federal exemptions for the Property and RV: (1) the hanging paragraph in 11 U.S.C. § 522(b)(3); and (2) Rule 1009(a) of the Federal Rules of Bankruptcy Procedure. (Doc. 4-16 at 12-13.) The bankruptcy court also cited *In re Urban*, 375 B.R. 882 (B.A.P. 9th Cir. 2007), *In re Shiu Jeng Ku*, 2017 WL 2705301 (B.A.P. 9th Cir. 2017), and *In re Cline*, 2015 WL 3988992 (B.A.P. 9th Cir. 2015), for the proposition that “[i]f the domiciliary requirement renders a debtor ineligible for state exemptions, the debtor may use federal exemptions under the catch-all provisions of 523(b).” (*Id.* at 11-12.) The bankruptcy court thus concluded that res judicata did not bar Debtor from amending his exemptions to assert claims under a new legal framework: “So he’s come back the third time and suggested that the federal exemptions apply, because 522(d) specifically, or (b) specifically provides, if no other state exemption applies, the federal can apply. That’s a different theory. It’s a different set of exemption claims.” (*Id.* at 8-9.) The bankruptcy court also cited *In re Lee*, 889 F.3d 639 (9th Cir. 2018), *In re Leach*, 595 B.R. 841 (Bankr. D. Idaho 2018), and *In re Buchberger*, 311 B.R. 794 (Bankr. D. Ariz. 2004), for the proposition that “[t]here’s a well-established principle that exemption statutes are deliberately construed in favor of debtors.” (*Id.* at 12.) Along the same lines, the bankruptcy court stated that “under Federal Rule of Bankruptcy Procedure 1009(a) the Debtors have a right to amend a voluntary petition, list, schedule or statement, as a matter of course, at any time before the case is closed.” (*Id.*) The bankruptcy court concluded that Appellant “failed to demonstrate how the Debtor’s amending of the schedules was not within his right under the Federal Rule of Bankruptcy Procedure 1009(a).” (*Id.* at 13.)

...

1           **B.     The Parties’ Arguments**

2           Appellant argues that “the Debtor’s third exemption claim in the same assets is  
3       barred” under res judicata. (Doc. 3 at 3, capitalization omitted.) As an initial matter,  
4       Appellant argues that “res judicata has [not] been abrogated in the bankruptcy court when  
5       it [comes] to exemptions. . . . The [Ninth] Circuit rejected the [D]ebtor’s argument that  
6       [*Law v. Siegel*, 571 U.S. 415 (2014)]] abrogated res judicata.” (*Id.* at 5-6, cleaned up.) In  
7       reliance on *In re Albert*, 998 F.3d 1088 (9th Cir. 2021), *In re Bryan*, 466 B.R. 460 (B.A.P.  
8       8th Cir. 2012), *In re Cogliano*, 355 B.R. 792 (B.A.P. 9th Cir. 2006), and *In re Magallanes*,  
9       96 B.R. 253 (B.A.P. 9th Cir. 1988), Appellant argues that Debtor “may not wait until the  
10      trustee has prevailed on an objection to his asserted exemptions and then try a second time,  
11      and then a third time, to exempt the same assets in a different fashion.” (*Id.* at 4-6.)<sup>6</sup>  
12      Elsewhere, Appellant adds: “The facts have never changed and the assets have never  
13      changed. The only thing that has changed is the legal theory.” (*Id.* at 6.) Appellant also  
14      argues that “the [bankruptcy] court did not explain why this case was not controlled by  
15      cases like *Albert*, *Bryan*, *Magallanes* and *Cogliano*. Rather, the court seemed committed  
16      to the proposition that exemptions could be amended at any time, even after final orders  
17      had been entered. That is contrary to the law. . . . The bankruptcy court committed  
18      reversible error in allowing this third exemption in the same assets after the first two  
19      exemptions had been denied.” (*Id.* at 6-7.)

20           Debtor responds that “[a]mendments are and should be liberally allowed at any  
21      time,’ absent certain circumstances not present here,” and that “exemption statutes are to  
22      be liberally construed in favor of debtors.” (Doc. 10 at 6-7, citations omitted.) Debtor then  
23      identifies two specific reasons why “[r]es judicata does not apply here.” (*Id.* at 7-13.) First,  
24      Debtor argues Appellant “has not identified which distinct type [of res judicata] he believes  
25      applies in this case (issue or claim preclusion) but, instead, makes the vague umbrella

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<sup>6</sup> Appellant also argues that the loophole to res judicata identified in *Cogliano* “does  
27      not exist in this case” because “[t]here is no claim that these assets are not estate property.  
28      No, this is just the assertion of new exemptions based on different legal theories over, and  
    over and over.” (*Id.* at 5.) Because Debtor does not argue that the loophole in *Cogliano*  
    applies here, it is unnecessary to address this argument.

1 argument that some sort of res judicata should apply. Regardless, [Appellant] has failed to  
2 establish the elements of either.” (*Id.* at 8.) Debtor adds that “a perusal of the cases cited  
3 doesn’t help the confusion either” because “*Albert, Bryan, Magallanes and Cogliano . . .*  
4 involve all forms of res judicata.” (*Id.*, cleaned up.) Second, Debtor argues that in  
5 Appellant’s cited cases, “the court only applied res judicata to disallow an exemption when  
6 the debtor was attempting to claim the same property exempt pursuant to the exact same  
7 statutory scheme,” and those cases thus “support the bankruptcy court’s holding in this  
8 case and/or are factually distinguishable.” (*Id.* at 9-12, cleaned up.) Debtor further argues  
9 that “the doctrine of res judicata does not prohibit a debtor from claiming exemptions in  
10 property under a different statutory scheme” where, as here, a debtor presents a new, legally  
11 distinct issue, “changing the exemption scheme from state to federal.” (*Id.* at 10-11,  
12 cleaned up.)

13 In reply, Appellant argues Debtor’s invocation of the principle that exemption  
14 statutes should be liberally construed is misplaced because that principle only applies  
15 “where the text of a statutory exemption is ambiguous as to whether it applies . . . . Here,  
16 there is no issue about statutory construction. There are no factual questions or legal  
17 arguments about whether any asset fits within the terms of the statute, nor is there any  
18 question about what a statute says or means or about what the legislature intended.” (Doc.  
19 11 at 1, cleaned up.) Appellant also specifies that the form of res judicata at issue here is  
20 “claim preclusion.” (*Id.* at 2.) Appellant then utilizes a series of long block quotes in an  
21 attempt to show why claim preclusion should be deemed applicable. (*Id.* at 2-7.) More  
22 specifically, Appellant first argues that “[a]n order sustaining a trustee’s objection to an  
23 exemption is a final judgment that satisfies the elements of res judicata.” (*Id.* at 2-5,  
24 cleaned up.) Second, Appellant argues that “[c]hanging the applicable law does not change  
25 the underlying facts,” but rather only changes which facts are relevant, and “[c]hanging  
26 which facts are relevant, by changing the law to be applied, does not make res judicata  
27 inapplicable.” (*Id.* at 6-9, cleaned up.) Appellant also argues that the one case that  
28 “allowed the debtors . . . to claim state law exemptions after their federal exemptions had

1 been denied,” *In re Ladd*, 450 F.3d 751 (8th Cir. 2006), is “one of those cases where bad  
 2 facts make for bad law” and “[e]ven the [United States Bankruptcy Appellate Panel of the  
 3 Eighth Circuit] went out of its way to sidestep *Ladd* in [*Bryan*].” (*Id.* at 8-9.)

#### 4 C. Analysis

5 As a threshold matter, the Court agrees with Appellant that claim preclusion is  
 6 potentially applicable in the context of bankruptcy exemptions. Although the Supreme  
 7 Court has held “federal law provides no authority for bankruptcy courts to deny an  
 8 exemption on a ground not specified in the [Bankruptcy] Code,” *Law*, 571 U.S. at 425  
 9 (emphasis omitted), the Ninth Circuit subsequently clarified that “because no Code  
 10 provision bars bankruptcy courts from deeming prior orders preclusive, the conflict  
 11 animating *Law* is not present,” and therefore “we do not read *Law* as undermining the  
 12 bankruptcy courts’ ability to invoke issue and claim preclusion as bases for rejecting  
 13 previously denied exemptions.” *Albert*, 998 F.3d at 1092-93. *See also In re Paine*, 283  
 14 B.R. 33, 39 (B.A.P. 9th Cir. 2002) (“Claim and issue preclusion apply in bankruptcy.”).

15 Turning to the merits, “claim preclusion[] bars litigation in a subsequent action of  
 16 any claims that were raised or could have been raised in the prior action.” *W. Radio Servs.*  
 17 *Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). For the doctrine to apply, “there  
 18 must be: 1) an identity of claims, 2) a final judgment on the merits, and 3) identity or privity  
 19 between parties.” *Id.* “[I]n bankruptcy cases the principle of res judicata should be invoked  
 20 only after careful inquiry because it blocks unexplored paths that may lead to truth and  
 21 shields the fraud and the cheat as well as the honest person.” *Latman v. Burdette*, 366 F.3d  
 22 774, 784 (9th Cir. 2004), *as amended* (June 8, 2004), *and abrogated on other grounds by*  
 23 *Law*, 571 U.S. 415 (internal quotations omitted, citation omitted).

##### 24 1. Identity Of Claims

25 When evaluating the first element (identity of claims) of the claim preclusion test,  
 26 courts look to the following four criteria: “(1) whether the two suits arise out of the same  
 27 transactional nucleus of facts; (2) whether rights or interests established in the prior  
 28 judgment would be destroyed or impaired by prosecution of the second action; (3) whether

1 the two suits involve infringement of the same right; and (4) whether substantially the same  
 2 evidence is presented in the two actions.” *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d  
 3 985, 987 (9th Cir. 2005). However, courts do not apply these criteria “mechanistically.”  
 4 *Id.*

5 Starting with the first criterion, courts in the Ninth Circuit use “a transaction test to  
 6 determine whether the two suits share a common nucleus of operative fact.” *Id.* “Whether  
 7 two events are part of the same transaction or series depends on whether they are related  
 8 to the same set of facts and whether they could conveniently be tried together.” *Id.* (citation  
 9 omitted). The Ninth Circuit has “often held the common nucleus criterion to be outcome  
 10 determinative under the first res judicata element.” *Id.* at 988.

11 The “common nucleus” criterion is easily satisfied here. As courts have recognized,  
 12 “where a plaintiff fashions a new theory of recovery or cites a new body of law that was  
 13 arguably violated by a defendant’s conduct, res judicata will still bar the second claim if it  
 14 is based on the same nucleus of operative facts as the prior claim.” *Bryan*, 466 B.R. at 465  
 15 (citation omitted). *See also In re Broughton*, 2018 WL 10418734, \*1 (E.D.N.C. 2018)  
 16 (after the bankruptcy court partially sustained the trustee’s objection to the debtor’s  
 17 exemption in her property under state law and granted the debtor “an exemption of  
 18 \$35,000” in the property under state law, the debtor was precluded from amending to add  
 19 an exemption under federal law that would exempt more than had previously been  
 20 allowed); *In re Marshall*, 224 B.R. 399, 399-400 (Bankr. D. Minn. 1998) (“Because the  
 21 debtor’s claim that the sexual harassment claim is exempt [under Minnesota statute] has  
 22 already been litigated and decided by a final judgment, principles of res judicata prohibit  
 23 the debtor from relitigating the exemptibility of the cause of action, even if he can come  
 24 up with a new theory [under federal statutes].”). *See generally Bailey v. United States*,  
 25 2001 WL 361482, \*2 (D. Ariz. 2001), *aff’d*, 42 F. App’x 79 (9th Cir. 2002) (“Plaintiff is  
 26 attempting . . . to reinstate his cause of action, against the same defendants, based on the  
 27 same facts, by using a new legal theory. Plaintiff is reminded that a plaintiff cannot revive  
 28 previously litigated causes of action by changing his legal theory.”) (internal citation

omitted).<sup>7</sup>

Here, Debtor’s claimed exemptions in the Property and RV in the Arizona Schedule, Washington Schedule, and Federal Schedule arise out of the same nucleus of operative facts because they involve a determination of entitlement to the same assets under state and federal homestead statutes. *In re Romano*, 378 B.R. 454, 463-65 (Bankr. E.D. Pa. 2007) (precluding the debtor from exempting a retirement account under state law after the bankruptcy court issued a final order denying an exemption for the same retirement account under federal law); *In re Walls*, 249 B.R. 506, 507-09 (Bankr. D. Minn. 2000) (same); *In re St. Hill*, 2005 WL 6522764, \*9-10 (Bankr. E.D. Pa. 2005) (precluding the debtor from amending his exemption in property from federal to state law when the bankruptcy court previously denied the exemption of that property under federal law). *Cf. Paine*, 283 B.R. at 39 (“Finally, the same claim or cause of action—whether the debts are ‘excepted from discharge’—is the issue in each instance.”); *In re Glenn*, 160 B.R. 837, 839 (Bankr. S.D. Cal. 1993) (“Since the sale was approved without objection, the debtors cannot now avoid the bar of res judicata merely by pleading a new legal theory to invalidate VSM’s lien and renew their claim for their already allowed homestead exemption.”); *In re McFarland*, 557 B.R. 256, 258-60 (S.D. Ga. 2016) (precluding the debtor from amending his schedule to

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<sup>7</sup> Much of the parties’ briefing concerns whether *Albert*, *Cogliano*, *Magallanes*, and *Bryan* are distinguishable from this case. On the one hand, those cases are factually distinguishable because they involved debtors attempting to exempt assets under the same legal framework in their initial and amended schedules, whereas Debtor sought to invoke a new legal framework in his final amended schedule. *Albert*, 998 F.3d at 1093 (“Albert’s initial and amended exemptions are legally identical. Her amended schedule sought to exempt the same assets as her earlier one—the counterclaims and accounts receivable—and it cited to the same California statutes in support—sections 704.140 and 704.210.”); *Cogliano*, 355 B.R. at 801-02 (“Cogliano’s second amended schedule C refers to the same property claimed exempt in her first amended schedule C, although it is described somewhat differently. . . . [A]n exemption claim does not merit a fresh determination simply by the ‘clarification’ or variation of description in an amended schedule C.”); *Magallanes*, 96 B.R. at 256 (concluding that res judicata barred the debtor from filing an amended schedule to exempt assets under the California Code of Civil Procedure (“CCP”) when the bankruptcy court previously entered a final order “disallowing all of the debtor’s claims of exempt property” as to those assets under different sections of the CCP); *Bryan*, 466 B.R. at 465-66 (concluding that res judicata barred the debtor from amending the schedule to claim exemptions for the same assets under the same or similar Missouri statutes). On the other hand, that factual distinction does not detract from the Court’s bottom-line conclusion that the “common nucleus” criterion is satisfied here.



1 assert that his annuity was not part of the bankruptcy estate under federal law after the  
 2 bankruptcy court denied an exemption in the annuity under state law and citing cases in  
 3 which “[c]ourts have held that res judicata bars debtors from repeatedly amending their  
 4 schedules to assert new theories for why a particular asset is exempt from bankruptcy”); *In*  
 5 *re Miller*, 153 B.R. 269, 275 (Bankr. D. Minn. 1993) (“The Debtors’ reliance, in the second  
 6 proceeding, on different substantive law and new legal theories, does not preclude the  
 7 operation of res judicata. Contrary, the doctrine prevents a party from suing on a claim  
 8 that is in essence the same as a previously litigated claim, but is dressed up to look  
 9 differently. Here, both the exemption and exclusion actions arise out of the same nucleus  
 10 of operative facts because they involve a determination of entitlement to the vested  
 11 pensions at filing as between the Debtors and their estates. The basis for the actions  
 12 originated at filing. The motivation of both actions is singular, to establish entitlement to  
 13 the same property.”) (internal citation omitted).

14 Although this conclusion arguably makes it unnecessary to go any further, because  
 15 “the common nucleus criterion [is often] outcome determinative under the first res judicata  
 16 element,” *Myopo*, 430 F.3d at 988, the other criteria identified by the Ninth Circuit  
 17 underscore why the “identity of claims” element is satisfied here. Debtor would need to  
 18 present substantially the same evidence to exempt the Property and RV under the Arizona,  
 19 Washington, and federal homestead exemptions. As a result, this case is distinguishable  
 20 from *Ladd*, where “[t]he substance of what the debtors would have to prove in each action  
 21 is substantially different. Under federal law, a debtor’s focus would be on value, and under  
 22 Minnesota law, it would be on acreage.” 450 F.3d at 754.<sup>8</sup> The key operative facts for the  
 23 Arizona, Washington, and federal homestead exemptions are how Debtor uses the  
 24 property—it must be used as a dwelling or residence—and whether Debtor’s interest in the

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 26 <sup>8</sup> For similar reasons, this case is distinguishable from *In re Reaves*, 256 B.R. 306  
 27 (B.A.P. 9th Cir. 2000), *aff’d on other grounds*, 285 F.3d 1152 (9th Cir. 2002), which  
 28 declined to apply issue preclusion in part because the debtor’s first claim of exemption  
 under the general exemption provisions of CCP in municipal court was not the same claim  
 as the debtor’s amended claim of exemption under the special bankruptcy exemption of  
 CCP in bankruptcy court. *Id.* at 308-12.



homestead was greater than the maximum allowed by each statute.<sup>9</sup> A.R.S. § 33-1101(A) (“Any person eighteen years of age or over, married or single, who resides within this state may hold as a homestead exempt from execution and forced sale, not exceeding \$250,000 in value, any one of the following: 1. The person’s interest in real property in one compact body on which exists a dwelling house in which the person resides. 2. The person’s interest in one condominium or cooperative in which the person resides. 3. A mobile home in which the person resides. 4. A mobile home in which the person resides plus the land on which that mobile home is located.”); RCW § 6.13.010(1) (“The homestead consists of real or personal property that the owner or a dependent of the owner uses as a residence.”); RCW § 6.13.030(1) (“The homestead exemption amount is the greater of: (a) \$125,000; (b) The county median sale price of a single-family home in the preceding calendar year; or (c) Where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state’s income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, no dollar limit.”); 11 U.S.C. § 522(d)(1) (“The debtor’s aggregate interest, not to exceed \$27,900 . . . in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.”). Additionally, for purposes of this criterion, it is irrelevant that Debtor reduced the value of the claimed Property and RV exemptions in the Federal Schedule.<sup>10</sup> *Albert*, 998 F.3d at 1093 (“Whatever the estimated value of Albert’s counterclaims, she had to show that the amount she claimed as exempt would be

<sup>9</sup> For the Washington homestead exemption, Debtor would also have to provide the location of the Property and RV. *Wieber*, 347 P.3d at 46 (“Washington’s homestead exemption law does not apply to property located in other states.”).

<sup>10</sup> For the Property, Debtor claimed \$38,997.64 as exempt in the Arizona Schedule, \$38,997.64 as exempt in the Washington Schedule, and \$5,000 as exempt in the Federal Schedule. (Doc. 4-2 at 12 [Arizona Schedule]; Doc. 4-5 at 2 [Washington Schedule]; Doc. 4-11 at 2 [Federal Schedule].) For the RV, Debtor claimed \$250,000 as exempt in the Arizona Schedule, \$250,000 as exempt in the Washington Schedule, and \$5,000 as exempt in the Federal Schedule. (Doc. 4-2 at 12 [Arizona Schedule]; Doc. 4-5 at 2 [Washington Schedule]; Doc. 4-11 at 3 [Federal Schedule].)

1 necessary for her support. Moreover, ‘the nature and extent of a debtor’s exemption rights  
 2 are determined as of the date of the [bankruptcy] petition.’ So regardless of whether the  
 3 claims remained contingent or had been reduced to a settlement post-petition, Albert’s  
 4 interest in them remained the same.”) (citations omitted).

## 5                   2.       Final Judgment On The Merits

6           The second element of the claim preclusion test is whether the earlier lawsuit  
 7 “reached a final judgment on the merits.” *Myopo*, 430 F.3d at 987 (citation omitted).

8           Debtor does not appear to dispute that this element is satisfied, and even if the issue  
 9 were disputed, the law would favor Appellant. The Ninth Circuit has held that “an order  
 10 denying an exemption constitutes a final appealable order.” *In re Gilman*, 887 F.3d 956,  
 11 961 (9th Cir. 2018). *See also Preblich v. Battley*, 181 F.3d 1048, 1056 (9th Cir. 1999)  
 12 (“[A] bankruptcy court’s order denying a claim of exemption is a final, appealable order  
 13 under 28 U.S.C. § 158(a)(1) and any appeal from such an order must be taken within the  
 14 time allowed under the bankruptcy rules, or the right to appeal will be waived.”); *Romano*,  
 15 378 B.R. at 463 (“[T]he preclusive effect of res judicata has been deemed relevant to  
 16 disputes involving objections to a debtor’s exemption claims.”); *St. Hill*, 2005 WL 6522764  
 17 at \*9 (“[A]n order either sustaining or overruling an objection to an exemption claim is  
 18 subject to immediate appeal and thus constitutes a final judgment, as defined by [Fed. R.  
 19 Bankr. P.] 7054(a).”) (footnote omitted). “As such, principles of preclusion apply to  
 20 prevent relitigation of the same exemption issues (issue preclusion) as well as those that  
 21 could have been litigated as to the exemptions at issue (claim preclusion).” *In re Albert-*  
 22 *Sheridan*, 2019 WL 7372667, \*6 (B.A.P. 9th Cir. 2019), *aff’d sub nom. Albert*, 998 F.3d  
 23 1088.

## 24                   3.       Identity Of The Parties

25           The final element of the claim preclusion test is whether the earlier lawsuit  
 26 “involved identical parties or privies.” *Mpoyo*, 430 F.3d at 987 (citation omitted). This  
 27 element is satisfied here—the parties to the objections to the Arizona Schedule and  
 28 Washington Schedule are identical to the parties to the objection to the Federal Schedule.

1                                   4.     Conclusion

2             For the reasons discussed above, Debtor’s claimed exemptions in the Property and  
 3     RV in the Federal Schedule are barred by the doctrine of claim preclusion. The bankruptcy  
 4     court thus erred by overruling Appellant’s res judicata-based objection to those  
 5     exemptions. As the Ninth Circuit has recognized, “[t]o hold otherwise would not only  
 6     undermine the finality of exemption orders, but would considerably frustrate the trustee’s  
 7     duty to expeditiously close the debtor’s estate. Debtors can amend their exemptions as a  
 8     matter of course, Fed. R. Bankr. P. 1009(a), so if orders denying exemptions carry no  
 9     preclusive weight, debtors could delay matters by claiming the same property as exempt  
 10    time and time again. Debtors could also decline to meaningfully press their claims, and  
 11    creditors would bear the brunt of such behavior, as the relitigation of resolved issues would  
 12    drain estate—not to mention judicial—resources. Those burdens are precisely what the  
 13    preclusion doctrines were designed to avoid, and they remain available to the bankruptcy  
 14    courts when ruling on previously denied claims.” *Albert*, 998 F.3d at 1092 (internal  
 15    citations omitted).

16            In concluding otherwise, the bankruptcy court cited *Urban*, *Shiu Jeng Ku*, *Cline*,  
 17    *Leach*, *Lee*, and *Buchberger*. Those cases are distinguishable because they did not uphold  
 18    exemptions asserted for the first time after the issuance of a final order sustaining  
 19    objections to previously asserted exemptions in the same property. *Urban*, 375 B.R. at  
 20    884-86 (debtor timely amended exemptions after trustee objected and before the  
 21    bankruptcy court entered a final order); *Shiu Jeng Ku*, 2017 WL 2705301 at \*2 (“Before  
 22    the bankruptcy court entered an order on Debtor’s exemptions, Debtor filed a notice of  
 23    appeal.”); *Cline*, 2015 WL 3988992 at \*1 (affirming bankruptcy court’s order sustaining  
 24    trustee’s objection to claimed exemptions); *Leach*, 595 B.R. at 843 (debtors amended their  
 25    exemption schedule before the trustee objected to the exemptions and also responded to  
 26    the trustee’s objection); *Lee*, 889 F.3d at 643-44 (debtor did not attempt to amend  
 27    exemptions after the entry of a final order); *Buchberger*, 311 B.R. at 794 (same).

28            Nor did Rule 1009(a) give Debtor an unrestricted right to amend his exemptions

1 until his case was closed. Although Rule 1009(a) provides that “[a] voluntary petition, list,  
 2 schedule, or statement may be amended by the debtor as a matter of course at any time  
 3 before the case is closed,” it does not foreclose the application of res judicata to claimed  
 4 exemptions. As courts have repeatedly concluded, “a debtor’s right to amend schedules  
 5 under Rule 1009(a) does not vitiate the preclusive effect of the bankruptcy court’s prior  
 6 final rulings.” *Albert-Sheridan*, 2019 WL 7372667 at \*6 (citation omitted). *See also In re*  
 7 *Wolfberg*, 255 B.R. 879, 883 & n.6 (B.A.P. 9th Cir. 2000), *aff’d*, 37 F. App’x 891 (9th Cir.  
 8 2002) (“Rule 1009(a) does not assist debtors. First, the right to amend schedules to add  
 9 exemptions ‘is not the same as the right to the exemption.’ The issue before the bankruptcy  
 10 court was an objection to the exemption. Even if debtors could amend their schedules to  
 11 claim the exemption, the mere fact that they can claim the exemption does not necessarily  
 12 mean that they are entitled it.”) (cleaned up); *Romano*, 378 B.R. at 464 (“The application  
 13 of res judicata . . . will not preclude a debtor from filing amended exemptions under Rule  
 14 1009(a), unless a final order denying an exemption claim for the same asset has previously  
 15 been entered.”); *St. Hill*, 2005 WL 6522764 at \*10 (same); *In re McFarland*, 2016 WL  
 16 953147, \*5 (Bankr. S.D. Ga. 2016), *aff’d*, 557 B.R. 256 (S.D. Ga. 2016) (“Bankruptcy Rule  
 17 1009(a) does not trump or foreclose the application of res judicata where a debtor could  
 18 have raised such arguments in the prior litigation, and failed to do so.”) (citation omitted);  
 19 *In re Daniels*, 270 B.R. 417, 423 (Bankr. E.D. Mich. 2001) (“[D]ebtors may not use the  
 20 amendment procedure under Rule 1009(a) to relitigate an exemption claim already  
 21 determined by the Court . . .”). Here, because the bankruptcy court issued not one, but  
 22 two final orders denying Debtor’s exemptions in the Property and RV under Arizona and  
 23 Washington law, Rule 1009(a) did not authorize Debtor to amend his exemptions for a  
 24 third time in an attempt to pursue a new legal theory.

25 Finally, to the extent Debtor contends his sympathetic personal circumstances  
 26 provide a reason to resolve the disputed legal issues in his favor,<sup>11</sup> the Court must reject

27 <sup>11</sup> Doc. 10 at 4 (“[Appellant] is relentlessly fighting to deny a disabled man his ability  
 28 to protect his personal assets with a total value of less than \$25,000.”); *id.* at 15 (“Mr.  
 Nance is an honest but unfortunate debtor, entitled to the constitutional relief the  
 Bankruptcy Court can provide. That relief includes protection of the necessities of life,

1 that invitation. *Reyes-Colon v. United States*, 974 F.3d 56, 63 (1st Cir. 2020) (discussing  
 2 judges’ duties of impartiality under 28 U.S.C. § 453 and noting that “as hard as our  
 3 sympathies may pull us, our duty to maintain the integrity of the substantive law pulls  
 4 harder”) (cleaned up).

### 5 III. The Federal Wildcard Exemption

#### 6 **A. The Bankruptcy Court’s Analysis**

7 During the hearing on Appellant’s objection to Debtor’s federal homestead  
 8 exemptions in the Property and RV, the bankruptcy court stated that “the second exemption  
 9 for the RV would fall within the catch-all exemption under 522(d)(5).” (Doc. 4-16 at 9.)  
 10 In response to Appellant’s argument that such an exemption “hasn’t been claimed” by  
 11 Debtor in the Federal Schedule, the bankruptcy court stated that Debtor “doesn’t have to  
 12 give the basis that it’s 522(d)(1) plus 522(d)(5). He has to make the claim. You’ve  
 13 objected. I find that it falls within the federal statutory scheme. I can find that.” (*Id.* at 9-  
 14 10.) The bankruptcy court therefore concluded that “Debtor has claimed, under 522(d)(1)  
 15 a homestead exemption of real property of \$5,000. . . . Under 522(d)(1) the Debtor may  
 16 claim a homestead exemption on real property up to 27,900. This leaves 22,900 in unused  
 17 exemption under 522(d)(1). Under 522(d)(5) the Debtor may claim a catch-all exemption  
 18 at any property not to exceed \$1,475, plus unused—any unused exemption under 522(d)(1)  
 19 not to exceed \$13,950. So the Debtor may claim an exemption in the RV not to exceed  
 20 \$15,425. In this case, the Debtor has claimed the catch-all exemption in the RV equal to  
 21 \$5,000. . . . This amount is less than the total amount of the 522(d)(5) exemption.” (*Id.* at  
 22 13.)

#### 23 **B. The Parties’ Arguments**

24 Appellant argues that because “[D]ebtor never once asserted the federal wildcard  
 25 exemption that the bankruptcy court allowed in the RV . . . [t]he bankruptcy court’s  
 26 selection of an exemption on behalf of the debtor, and then allowing that exemption,  
 27 exceeded the jurisdiction and authority of the bankruptcy court.” (Doc. 3 at 7-8.) Appellant

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such as Mr. Nance’s modest RV and the land upon which it sits.”).

1 adds that “the bankruptcy court can only decide actual cases and controversies which are  
2 brought before the court.” (*Id.*)

3 In response, Debtor first notes that Appellant mischaracterized one of the opinions  
4 cited in the opening brief as a concurrence, when in fact it was a dissent. (Doc. 10 at 13.)  
5 Debtor then argues that “[c]ourts are given the authority to look beyond the arguments  
6 presented by counsel at times” and “[c]ourts have the ability to *sua sponte* raise arguments  
7 not advanced by either party in multiple circumstances,” including “order[ing] additional  
8 briefing about whether a statute was unconstitutionally vague.” (*Id.* at 13-15.) Debtor also  
9 argues that Appellant “has cited no authority for his belief that the bankruptcy court is  
10 prohibited from allowing an unclaimed exemption that appears within the same statutory  
11 scheme [Debtor] is currently using, nor is [Debtor] aware of any such authority.” (*Id.* at  
12 15.)

13 In reply, Appellant construes Debtor’s argument as that the bankruptcy court can  
14 *sua sponte* “identify and apply the proper construction of governing law” and “order  
15 additional briefing,” then argues that those circumstances “did not happen here” where “the  
16 court ventured off on its own to identify, select and then allow an exemption for this debtor  
17 when the debtor himself had never claimed such an exemption.” (Doc. 11 at 9-10.)  
18 Appellant also reiterates that the bankruptcy court cannot “select[] and allow[] exemptions  
19 for debtors.” (*Id.* at 10-11.)<sup>12</sup> Appellant next argues that *United States v. Sineneng-Smith*,  
20 590 U.S. 371 (2020), undermines rather than supports Debtor’s position. (*Id.* at 11.)  
21 Appellant then accuses Debtor of “tacitly admit[ing] that [Debtor] has no authorities of  
22 his own that allow a bankruptcy judge to *sua sponte* select and allow an exemption for a  
23 debtor, particularly one who is represented by counsel.” (*Id.*) Appellant also argues that  
24 “just because another court has never published an opinion does not mean that what the  
25 bankruptcy court did was permissible.” (*Id.* at 11-12.)

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27  
28 <sup>12</sup> Appellant also acknowledges the misattribution error identified in Debtor’s brief.  
(*Id.* at 11.)



1           **C.     Analysis**

2           It is unclear whether it is even necessary to address Appellant’s arguments regarding  
3 the federal wildcard exemption in light of the conclusion reached in Part II above, which  
4 is that the bankruptcy court was prohibited under the doctrine of claim preclusion from  
5 allowing Debtor to assert *any* federal exemptions in the Property and RV in light of his  
6 earlier, unsuccessful attempts to assert state exemptions in the same property.  
7 Nevertheless, to the extent it is necessary to reach the issue, the Court agrees with Appellant  
8 that the bankruptcy court violated the principle of party presentation by granting relief to  
9 Debtor based on an exemption that Debtor himself did not assert.

10           “In our adversarial system of adjudication, we follow the principle of party  
11 presentation. . . . [A]s a general rule, our system is designed around the premise that parties  
12 represented by competent counsel know what is best for them, and are responsible for  
13 advancing the facts and argument entitling them to relief. In short: Courts are essentially  
14 passive instruments of government. They do not, or should not, sally forth each day  
15 looking for wrongs to right. They wait for cases to come to them, and when cases arise,  
16 courts normally decide only questions presented by the parties.” *Sineneng-Smith*, 590 U.S.  
17 at 375-76 (cleaned up). *See also Greenlaw v. United States*, 554 U.S. 237, 243 (2008)  
18 (same); *In re Rhinebolt*, 131 B.R. 973, 978 (Bankr. S.D. Ohio 1991) (“[T]he duty of  
19 claiming an exemption is that of the debtor. This Court will not introduce *sua sponte* an  
20 additional theory of exemption.”) (internal citation omitted); *In re Nothdurft*, 521 B.R. 640,  
21 642 (Bankr. C.D. Ill. 2014), *aff’d*, 526 B.R. 780 (C.D. Ill. 2015) (“The Trustee correctly  
22 argues that the burden is on the Debtors to . . . assert proper exemptions for such assets.  
23 The Debtors’ suggestion that the Court should skip the formalities and allow an exemption  
24 they have never claimed must be rejected.”).

25           In light of these principles, the bankruptcy court lacked authority to grant the federal  
26 wildcard exemption for Debtor’s RV when Debtor did not raise that exemption himself.  
27 Rule 4003(a) of the Federal Rules of Bankruptcy Procedure explains that the burden of  
28 claiming an exemption falls on the debtor or a dependent of the debtor: “A *debtor* shall list



1 the property claimed as exempt under § 522 of the Code on the schedule of assets required  
2 to be filed by Rule 1007. If the *debtor* fails to claim exemptions or file the schedule within  
3 the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days  
4 thereafter.” *Id.* (emphases added). True, 11 U.S.C. § 105(a) provides that “[t]he court may  
5 issue any order, process, or judgment that is necessary or appropriate to carry out the  
6 provisions of this title. No provision of this title providing for the raising of an issue by a  
7 party in interest shall be construed to preclude the court from, sua sponte, taking any action  
8 or making any determination necessary or appropriate to enforce or implement court orders  
9 or rules, or to prevent an abuse of process.” *Id.* However, the bankruptcy court did not  
10 need to *sua sponte* raise and grant the federal wildcard exemption for the RV “to enforce  
11 or implement court orders or rules, or to prevent an abuse of process.” As explained above,  
12 Debtor had multiple opportunities to timely assert a federal wildcard exemption for the RV  
13 and did not take advantage of those opportunities.

14 The cases cited by Debtor do not compel a different conclusion. Debtor was  
15 represented by legal counsel during the bankruptcy proceedings and his counsel could have  
16 listed the RV as exempt under the federal wildcard exemption but did not. Indeed, Debtor’s  
17 counsel asserted the federal wildcard exemption in relation to some of Debtor’s other assets  
18 (Doc. 4-11 at 3-4 [claiming exemptions under 11 U.S.C. § 522(d)(5) for Debtor’s cash,  
19 checking account, savings accounts, and water softener]), meaning counsel was aware the  
20 exemption existed but chose, for whatever reason, not to assert it in relation to the RV.

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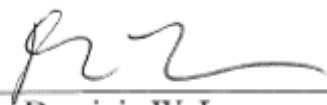
28 ...

1 Accordingly,

2 **IT IS ORDERED** that the bankruptcy court's order is **reversed**. This action is  
3 remanded to the bankruptcy court for further proceedings consistent with this decision.

4 **IT IS FURTHER ORDERED** that the Clerk of Court enter judgment accordingly  
5 and terminate this action.

6 Dated this 26th day of March, 2024.

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10 Dominic W. Lanza  
11 United States District Judge  
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